

## **The complaint**

Mr and Mrs M say Santander UK Plc didn't give them fair warning before starting legal action regarding their mortgage. They ask that it stops legal action and refunds all related costs.

## **What happened**

The term of Mr and Mrs M's interest only mortgage expired in 2018. Santander agreed an extension. The extension expired in August 2023 with an unpaid capital balance and interest arrears. In late 2024 Santander started action for possession.

Mr M says Santander started legal action without notice or following the pre-action protocol. He says Santander didn't ask about their circumstances or how this might affect family members living in the property. Mr M says Santander didn't respond to his request for an extension. He's also unhappy that Santander referred him to a provider of lifetime mortgages and might receive a referral fee.

Our investigator said Santander acted fairly when it gave Mr and Mrs M reasonable time to make arrangements to repay the debt. Mr M's proposal to repay the debt in two years' time wasn't acceptable to Santander. Our investigator said Santander sent notice of its intention to start legal proceedings. As no arrangement was agreed, our investigator said it was reasonable for Santander to instruct solicitors to start legal proceedings.

Mr M says while he received letters from Santander this didn't make it clear it would start legal action. He says his calls with Santander left him with the impression that Santander would continue to monitor the situation. Mr M said the third party debt collector takes a hefty fee. Mr M said recently that they were nearing completion on a lifetime mortgage.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We provide an informal dispute resolution service. While we take law, regulation and good industry practice into account we determine complaints by reference to what's fair and reasonable in all the circumstances. We aren't required to respond to each point raised by the parties. What I have to do is explain my reasons for reaching my decision.

In 2019 Santander agreed to extend the term of Mr and Mrs M's mortgage to August 2023. Mr and Mrs M signed a declaration that they understood they'd have to repay the mortgage in August 2023, and this might mean having to sell the property.

It was reasonable for Santander to expect Mr and Mrs M to make arrangements to repay the debt in August 2023. It wrote to Mr and Mrs M to remind them that the mortgage was due to be repaid in August 2023.

Santander made Mr and Mrs M aware that the mortgage term (including the extension) had expired and the whole debt had become due. It told Mr M in late 2023 they didn't meet

criteria for another extension on an interest only basis. It wrote to Mr and Mrs M asking them to repay the debt. These letters said it could take possession of the property if the debt remained unpaid.

Santander allowed Mr and Mrs M reasonable time to arrange for the mortgage to be repaid. It wrote to Mr and Mrs M regularly to remind them about the need to repay the debt and the potential consequences of not doing so. Its notes say it also made Mr M aware of the risk of possession action on calls. Santander didn't have to speak to Mrs M separately to repeat this: it said this in letters sent to Mr and Mrs M.

Mr and Mrs M don't dispute receiving these letters – Mr M says Santander sent “umpteen” warnings. It seems, despite this, Mr and Mrs M assumed Santander wouldn't start legal action. The letters set out clear warnings in capital letters about the risk of possession action. Santander isn't responsible if Mr and Mrs M disregarded the warnings in the letters.

Mr M says Santander's letters seemed to be mainly concerned with the arrears (the unpaid interest). Santander's letters said the arrears were owed on top of the outstanding capital balance.

Santander wrote to Mr and Mrs M in early August 2024. The letter said Santander needed to agree an arrangement with them or start legal action. It said their mortgage account was due to be referred to its legal department with the possibility of court action which could lead to the repossession of their home. The letter also said Mr and Mrs M would be liable for legal fees and costs. It said Mr and Mrs M could stop legal action if they called to make an arrangement to pay the outstanding balance.

Mr M called Santander after receiving the letter. But he didn't put forward a credible proposal to repay the mortgage balance within a reasonable period. No arrangement to repay the outstanding balance was agreed. Santander doesn't have to hold recovery action indefinitely. In the circumstances, I think it was fair for Santander to instruct solicitors to start action for possession. The mortgage terms and conditions allow Santander to add legal fees and costs to the mortgage balance. The letter sent in early August 2025 made Mr and Mrs M aware of this.

In early 2025 Mr M asked Santander and its solicitors to hold legal action while he looked into taking out a lifetime mortgage. He didn't provide evidence that an application was being progressed (or even started) or what the timing might be. I don't think Santander had fairly to hold legal action on the basis Mr and Mrs M might take out a lifetime mortgage.

Mr M said their preference was to wait two years before selling the property. He said this would fit better with Mrs M's retirement plans as she'd reach state pension age. In late 2024 Mr M told Santander they traded from the house and it was unlikely downsizing would allow them to continue the business. Mr M said their income was variable although he hoped it would improve enough to clear the interest arrears. Mr M said Santander hadn't considered the effect of its actions on other residents, such as their daughter who needs support with her mental health.

Mr and Mrs M didn't want to sell the property, and it seems selling the property would mean them having to rearrange how they managed their business. Santander had already extended the term from 2018 to 2023. It allowed Mr and Mrs M another year to make arrangements for the mortgage balance to be repaid before it started legal action. I think this was a reasonable amount of time for Mr and Mrs M to look into their options. Santander told Mr M in late 2023 that they didn't meet criteria for an extension on an interest only basis. Mr and Mrs M had direct debits returned unpaid in 2023 and 2024. While some were paid when re-presented and Mr and Mrs M made some payments into the mortgage account, the

mortgage was in arrears of about four months by late 2024. This suggests Mr and Mrs M might have struggled to maintain interest payments. Mr M told Santander in mid-2024 he was exploring options such as a capital repayment mortgage, equity release and sale of assets to reduce the balance, and said he was taking independent financial advice. He recently said they are close to completing a lifetime mortgage. So it seems Mr and Mrs M did have options other than to sell the property.

In the circumstances, I can't fairly find that Santander should have offered Mr and Mrs M a further extension on an interest only basis outside its usual criteria.

Mr M was unhappy with the exit terms of the lifetime mortgages available from the business that Santander referred him to. He's also unhappy that Santander might receive a referral fee from this provider. Santander confirmed the fee was not paid by the customer or added to their borrowing. This doesn't change the outcome of the complaint. Mr and Mrs M were free to look into options offered by other providers.

Mr M says Santander didn't meet the terms of the pre-action protocol. I'd expect Santander to meet relevant codes and regulations, when they apply. Santander said the pre-action protocol for possession claims based on mortgage arrears didn't apply as the mortgage was out of term. Mr M says a court has issued a possession order, so it seems the court was satisfied with the process followed by Santander.

The purpose of the pre-action protocol is essentially to encourage both parties to act fairly and reasonably and maintain contact to reach agreement to resolve the arrears without court action. I think Santander treated Mr and Mrs M fairly, it kept them informed about the mortgage account, maintained regular contact with them and gave them a reasonable amount of time to make arrangements and put forward a credible proposal to repay the mortgage balance.

Mr M says the court granted a possession order to Santander while the complaint was with us. Santander's notes say it put legal action on hold – and asked the solicitors to do the same – when we contacted it. I haven't seen the court order. It's not clear that the hearing took place after we told Santander that Mr and Mrs M had brought their complaint to us. But either way, while lenders often agree to hold legal action while we look into a complaint, they aren't required to do so. So this doesn't change the outcome of the complaint.

This decision is the end of our process and it's likely Santander will restart the recovery process. I'm pleased to hear that Mr and Mrs M have a lifetime mortgage nearing completion. I'd encourage them to send evidence of this to Santander, so that it can fairly consider whether to hold action while the lifetime mortgage completes.

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 21 November 2025.

Ruth Stevenson  
**Ombudsman**